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INTERSTATE COMMERCE COMMISSION

Conditional Sale Agreement

Dated as of September 15, 1971

BETWEEN

ACF INDUSTRIES, INCORPORATED

AND

SHPX FIFTH CORPORATION

Agreement and Assignment

Dated as of September 15, 1971

BETWEEN

ACF INDUSTRIES, INCORPORATED

AND

FIRST NATIONAL CITY BANK,

Agent

CONDITIONAL SALE AGREEMENT, dated as of September 15, 1971, between ACF INDUSTRIES, INCORPORATED, a New Jersey corporation (hereinafter called the "Manufacturer" or "Vendor" as the context may require, as more particularly set forth in Article 27 hereof), and SHPX FIFTH CORPORATION, a New York corporation (hereinafter called the "Purchaser").

WHEREAS, the Manufacturer agrees to construct, sell and deliver to the Purchaser, and the Purchaser has agreed to purchase, 1,000 new box cars identified in Annex A attached hereto (hereinafter called the "Cars") as hereinafter set forth; and

WHEREAS, the Purchaser entered into a Lease of Railroad Equipment dated as of March 23, 1971 (hereinafter called the "Lease"), bearing recordation no. 6101 filed and recorded on April 8, 1971 with the Interstate Commerce Commission and deposited on April 13, 1971 with the Registrar General of Canada (notice thereof having been published on April 24, 1971 in the "Canada Gazette"), with George P. Baker, Richard C. Bond, Jervis Landgon, Jr. and Willard Wirtz, Trustees of the Property of Penn Central Transportation Company, Debtor (hereinafter called the "Lessee"), providing for the lease, on the terms therein set forth, by the Purchaser to the Lessee of the Cars;

Now, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. *Construction and Sale.* Pursuant to this Agreement, the Manufacturer will construct and will sell and deliver the Cars to the Purchaser and the Purchaser will, subject to the provisions of this Agreement, purchase from the Manufacturer and accept delivery of and pay for the Cars, each of which will be constructed in accordance with the specifications referred to in Annex A hereto and in accordance with the specifications and General Arrangement Drawing approved by the Lessee (which specifications are hereinafter called the "Specifications"). The design, quality and component parts of the Cars will conform to all Federal Railroad Administration requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to new railroad equipment of the character of the Cars as of the date of this Agreement.

ARTICLE 2. *Delivery.* The Manufacturer will deliver the Cars to the Purchaser, F.O.B. the Manufacturer's plant in St. Louis, Missouri, and in accordance with the delivery schedule set forth in Annex A hereto, or at such other point and time as the Manufacturer and the Purchaser may mutually agree upon.

The Manufacturer's obligation as to time of delivery is subject, however, to rescheduling of shop space and delays due to strikes, differences with workmen, labor troubles, acts of God, governmental acts and regulations, war or war conditions, riots or civil commotion, sabotage, fires, floods, explosions or other accidents, or to delays of carriers or of subcontractors or in receipt of materials, or to delays occasioned by or arising in connection with the construction of other cars or products for the Manufacturer's other customers, or to any other cause or causes (whether or not of the same general character as those herein specifically enumerated) beyond the Manufacturer's reasonable control.

Notwithstanding the preceding provisions of this Article 2, any Cars not delivered, accepted and settled for pursuant to Article 3 hereof on or before May 1, 1972 shall be excluded from this Agreement and not included in the term "Cars" as used in this Agreement. In the event of any such exclusion, the Purchaser and the Manufacturer shall execute an agreement or agreements supplemental hereto limiting this Agreement to the Cars not so excluded herefrom and, if the Manufacturer's failure to deliver, on or before May 1, 1972, all the Cars to be constructed and sold by the Manufacturer, resulted from one or more of the causes referred to in the preceding paragraph, the Purchaser and the Manufacturer shall execute a separate agreement providing for the purchase of such excluded Cars by the Purchaser, on the terms herein specified, payment to be made in cash on delivery of such Cars either directly or by means of a conditional sale, equipment trust, or such other appropriate method of financing the purchase, as the Purchaser shall determine.

From time to time upon the completion of the construction of each Car or of a number of Cars, such Car or Cars shall be presented to an inspector or other authorized representative of the Purchaser (who may be an employee of the Lessee) for inspection at the place designated for delivery of such Car or Cars, and, if each such Car or Cars conform to the Specifications and if delivery is accepted, such inspector or authorized representative of the Purchaser shall execute and deliver to the Manufacturer, in such number of counterparts as may reasonably be requested, a certificate of inspection and acceptance, in substantially the form of Schedule A attached to the Lease (hereinafter called the "Certificate of Inspection and Acceptance") stating that such Car or Cars have been inspected and accepted by him on behalf of the Purchaser and are marked in accordance with Article 6 hereof. Such Certificate of Inspection and Acceptance shall be conclusive evidence that the Cars covered thereby have been delivered to the Purchaser and conform to the Specifications and are acceptable to the Purchaser in all details; *provided, however*, that the Manufacturer shall not be relieved of its warranties contained in Articles 13 and 14 hereof.

The Manufacturer shall bear the risk of loss or damage to each Car until delivery to and acceptance by the Purchaser of such Car. Upon delivery and acceptance by the Purchaser of any Car, the Purchaser shall bear the risk of loss or damage to such Car.

ARTICLE 3. *Purchase Price and Payment.* The base price or prices per Car, F.O.B. the Manufacturer's plant, are set forth in Annex A hereto. The term "Purchase Price" as used herein shall mean the Manufacturer's average cost, F.O.B. the Manufacturer's plant for all Cars delivered to and accepted by the Purchaser, which shall include actual cost of material, direct labor and tooling, and overhead at standard, but shall exclude the overhead of the Manufacturer's corporate headquarters and any manufacturing profit.

For the purpose of making settlement for the Cars, the Cars shall be divided into groups (each such group being hereinafter called a "Group") in order that not more than four Groups are delivered to and accepted by the Purchaser and that each of the first three Groups consist of not less than 250 Cars; *provided, however*, that if there shall at any time have been delivered to and accepted by the Purchaser any Cars and the Manufacturer shall be prevented by one or more of the causes referred to in the second paragraph of Article 2 hereof from delivering additional Cars for a period of 10 business days or more following presentation by the Manufacturer to the Purchaser of the Cer-

tificate of Inspection and Acceptance with respect to such delivered and accepted Cars, such delivered and accepted Cars may, at the option of the Manufacturer, constitute an additional Group for purpose of settlement.

Subject to the provisions of this Article 3 the Purchaser hereby acknowledges itself to be indebted to the Vendor in the amount of, and promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Cars as follows:

(a) On the Closing Date (as hereinafter defined) with respect to each Group, the amount by which (i) the sum of (A) the aggregate Purchase Price of all Cars in such Group, as stated in the invoice therefor (hereinafter called the "Group Invoiced Purchase Price") plus (B) the aggregate amount of the Group Invoiced Purchase Prices of all other Cars for which settlement has theretofore been, or is then being, made exceeds (ii) the sum of (x) \$14,000,000 plus (y) any amount previously paid under this subparagraph (a);

(b) Upon receipt from the Manufacturer of a final certificate or certificates (hereinafter called the "Final Certificate") of the aggregate Purchase Price for all Groups to be settled for with the Manufacturer as provided herein, the amount, if any, by which the final aggregate Purchase Price of all such Groups, as stated therein (hereinafter called the "Final Invoiced Purchase Price"), shall exceed the sum of the Group Invoiced Purchase Prices of all such Groups; and

(c) In instalments, as hereinafter provided, an amount equal to the sum of the Group Invoiced Purchase Prices of all Cars, less the amounts paid or payable in respect thereof pursuant to subparagraph (a) of this paragraph (the amount payable pursuant to this subparagraph (c), which shall not exceed \$14,000,000 in aggregate principal amount, being hereinafter called the "Conditional Sale Indebtedness").

If this Agreement shall be assigned by the Manufacturer, the obligations of the Purchaser under subparagraphs (a) and (b) of the preceding paragraph of this Article 3 shall be unsecured obligations and the Manufacturer shall not have any lien on, security interest in, or claim against, any Car or any part thereof in respect of such obligations.

The first instalment of the Conditional Sale Indebtedness shall be payable on December 31, 1972 in such amount, and subsequent instalments shall be payable thereafter on December 31 of each year in such amounts, which, together with other payments or prepayments of the Conditional Sale Indebtedness made on or prior thereto (whether pursuant to Article 7 hereof or otherwise), shall cause the Conditional Sale Indebtedness outstanding on each date set forth below to be equal to or (except for December 31, 1978) less than that amount equal to the percentage of the original Conditional Sale Indebtedness set forth opposite such date below:

<u>Date</u>	<u>Percentage of the Original Conditional Sale Indebtedness</u>
December 31, 1972	89.3%
December 31, 1973	78.6%
December 31, 1974	67.8%
December 31, 1975	57.2%
December 31, 1976	46.5%
December 31, 1977	35.8%
December 31, 1978	0.0%

The unpaid balance of the Conditional Sale Indebtedness in respect of a Group of Cars shall bear interest from the Closing Date in respect of which such Conditional Sale Indebtedness shall have been incurred at an interest rate equal to $\frac{1}{2}$ of 1% per annum greater than the best rate (hereinafter called the "Best Rate") of First National City Bank on 90-day loans to responsible and substantial commercial borrowers in effect from time to time, but in no event shall such interest rate payable by the Purchaser be less than $5\frac{1}{2}\%$ per annum or in excess of $9\frac{1}{2}\%$ per annum, each change in such interest rate to take effect simultaneously with the corresponding change in the Best Rate announced by First National City Bank. Such interest shall be payable quarterly, to the extent accrued, on the last day of each March, June, September and December in each year, commencing December 31, 1971.

The Final Certificate shall be delivered by the Manufacturer on or before May 1, 1972, and if not so delivered, the Final Invoiced Purchase Price of the Cars shall be, for all purposes of this Agreement, the sum of the Group Invoiced Purchase Prices of the Cars. The Manufacturer agrees that the Group Invoiced Purchase Prices of the Cars shall be so fixed that they will not in the aggregate exceed the Final Invoiced Purchase Price thereof.

The term "Closing Date" with respect to any Group of the Cars shall mean such date not later than May 1, 1972, not more than 10 business days following presentation by the Manufacturer to the Purchaser of the Certificate of Inspection and Acceptance and the invoice for such Group, as shall be fixed by the Purchaser by written notice received by the Vendor at least 5 business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

Interest under this Agreement shall be determined on the basis of a 365-day year factor.

The Purchaser will pay, to the extent legally enforceable, interest at the rate of $10\frac{1}{2}\%$ per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. In any case where the date of a payment provided for in this Agreement shall be, in the City of New York, a Saturday, Sunday, a holiday or a day on which banking institutions are authorized by law to close, then such payment need not be made on such date but may be made on the next succeeding business day with the same force and effect as if made on the date provided for in this Agreement and such extension of time shall in such case be included in computing interest in connection with such payment. The Purchaser shall have the right at any time and from time to time, upon 5 business days' written notice from the Purchaser to the Vendor, to prepay the Conditional Sale Indebtedness in whole or in part without premium or penalty but with accrued interest thereon to the date of such prepayment on the amount prepaid. Each partial prepayment shall be in the amount of \$100,000 or a multiple thereof and shall be applied to the instalments of the Conditional Sale Indebtedness in the order of their maturities.

ARTICLE 4. *Taxes.* All payments to be made by the Purchaser hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor in respect of the amount of any local, state or federal taxes (other than income, gross receipts [except gross income or gross receipts taxes in the nature of sales taxes], excess profits and similar taxes) or license fees hereafter levied or imposed upon, or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which expenses, taxes and license fees the Purchaser assumes and agrees to pay on demand except to the extent that the Lessee shall pay such expenses, taxes and license fees pursuant to Section 9 of the Lease, in addition to the other amounts payable by it pursuant to this Agreement. The Purchaser will also pay promptly all taxes and assessments, except to the extent that the Lessee shall pay such taxes and assessments pursuant to Section 9 of the Lease, which may be imposed upon the Cars delivered to it, or for the use or operation thereof by the Purchaser, or upon the earnings arising therefrom, or upon the Vendor solely by reason of its ownership thereof, and will keep at all times all and every part of the Cars free and clear of all taxes and assessments which might in any way affect the title of the Vendor or result in a lien (other than a Permitted Lien, as defined in Article 12 hereof) upon any Car; *provided, however*, that the Purchaser shall be under no obligation to pay any taxes, assessments, license fees, charges, fines or penalties of any kind so long as it is contesting in good faith and by appropriate legal proceedings such taxes, assessments, license fees, charges, fines or penalties and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder. If any such expenses, taxes, assessments, license fees, charges, fines or penalties shall have been charged or levied against the Vendor directly and paid by the Vendor, the Purchaser shall reimburse the Vendor on presentation of invoice therefor; *provided, however*, that the Purchaser shall not be obligated to reimburse the Vendor for any expenses, taxes, assessments, license fees, charges, fines or penalties so paid unless the Vendor shall have been legally liable in respect thereof, or unless the Purchaser shall have approved the payment thereof.

ARTICLE 5. *Title to the Cars.* The Vendor shall and hereby does retain the full legal title to and property in the Cars until the Purchaser shall have made all of the payments hereunder and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Cars to and the possession and use thereof by the Purchaser or the Lessee as herein provided. Any and all additions to the Cars and any and all replacements of parts thereof and additions thereto (except special equipment installed in any Car by the Lessee with the consent of the Purchaser, *provided* that such equipment is removed by the Lessee before such Car is returned to the Purchaser and all damage resulting from such installation and removal is repaired by the Lessee and *further provided* that removal of such equipment does not affect such Car's serviceability or use in unrestricted interchange) shall constitute accessions to the Cars and shall be subject to all the terms and conditions of this Agreement and included in the term "Cars" as used in this Agreement.

When and only when the Vendor shall have been paid the full amount of the Conditional Sale Indebtedness, together with interest thereon, and all other payments as herein provided, and all the Purchaser's obligations herein contained shall have been performed by the Purchaser, absolute right to the possession of, title and property in the Cars shall pass to and vest in the Purchaser without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Purchaser, will execute a bill or bills

of sale of the Cars transferring the Vendor's title thereto and property therein to the Purchaser or upon its order free of all liens and encumbrances created or retained hereby and deliver such bill or bills of sale to the Purchaser at its address specified in Article 23 hereof, and will execute in the same manner and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Purchaser to the Cars and will pay to the Purchaser any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Purchaser hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or to file such certificate within a reasonable time after written demand by the Purchaser.

ARTICLE 6. *Marking of Cars.* The Purchaser will use its best efforts to keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Car in letters not less than one inch in height, the name of the Vendor followed by the word "Owner" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Vendor to the Cars and its rights under this Agreement. The Purchaser will not place, or permit the Lessee to place, any such Car in operation, or exercise any control or dominion over any part thereof, until such name and word or words shall have been so marked on both sides thereof and will replace promptly, or use its best efforts to cause the Lessee to replace promptly, any such name and word or words which may be removed, defaced or destroyed.

On or prior to the time of delivery of each Car to the Purchaser, the Manufacturer hereby agrees to cause to be placed on each side of each Car the identifying reporting mark PCA and the Lessee's road number as set out in Annex A hereto. At all times thereafter, the Purchaser will use its best efforts to cause each Car to bear the number and reporting mark so assigned to it, and will not change, or permit the Lessee to change, the number of any Car except with the consent of the Vendor and in accordance with a statement of a new number to be substituted therefor which consent and statement previously shall have been filed with the Vendor by the Purchaser and filed, recorded or deposited in all public places where this Agreement shall have been filed, recorded or deposited.

Except as above provided, the Purchaser will not allow the name of any person, association or corporation to be placed on the Cars as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Purchaser may cause the Cars to be marked as contemplated by Section 8 of the Lease and to be lettered with the names, initials or insignia customarily used by the Lessee on equipment of the same or a similar type for convenience of identification of the rights to use and operate the Cars under the Lease.

ARTICLE 7. *Loss, Theft or Destruction of Cars.* In the event that any Car shall be worn out, lost, stolen, destroyed or damaged beyond economic repair, from any cause whatsoever, or shall be requisitioned, taken over or nationalized by any governmental

authority under the power of eminent domain or otherwise (except by a Reorganized Company, as defined in the Lease) (such occurrence being hereinafter called a "Casualty Occurrence") prior to the payment of the full amount of the Conditional Sale Indebtedness, together with interest thereon, and all other payments required hereby, the Purchaser shall promptly (after it has knowledge of such Casualty Occurrence) and fully inform the Vendor in regard thereto and shall, within 30 days after the occurrence of such Casualty Occurrence, file with the Vendor a certificate setting forth the Casualty Value (as hereinafter defined) of such Car. If the Purchaser receives notice of any Casualty Occurrence under the Lease, such notice to the Vendor shall be given the date such notice is given to the Purchaser under the Lease. When the aggregate Casualty Value of Cars having suffered a Casualty Occurrence (exclusive of Cars having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this Article 7) shall exceed \$500,000 (or less, at the discretion of the Purchaser), the Purchaser, on the next succeeding December 31, shall promptly pay to the Vendor a sum equal to the aggregate Casualty Value of such Cars as of the date of such payment.

The Casualty Value of any Car suffering a Casualty Occurrence shall be deemed to be that proportion of the original Purchase Price thereof remaining unpaid (each payment of the Conditional Sale Indebtedness, other than any payments made pursuant to this Article 7, being deemed to be applied pro rata to the payment of the Purchase Price of such Car) as of the date payment is made with respect to such Casualty Occurrence. For purposes of this paragraph, the original Purchase Price of any Car delivered to and accepted by the Purchaser hereunder shall be an amount which bears to the aggregate original Purchase Price of all the Cars so delivered and accepted in the same ratio as one Car bears to the total of all the Cars so delivered and accepted.

Any moneys paid to the Vendor pursuant to the first paragraph of this Article 7 shall be applied, immediately upon receipt thereof by the Vendor, to prepay the instalments of the Conditional Sale Indebtedness thereafter falling due in the order of their maturities, after payment by the Purchaser of all interest then accrued and unpaid on each instalment or portion thereof so prepaid, but without premium. In the event that any moneys are paid to the Vendor pursuant to the first paragraph of this Article 7, the Purchaser will pay to the Vendor, on the date of application of such moneys to the prepayment of the Conditional Sale Indebtedness as provided above, interest then accrued and unpaid on the Conditional Sale Indebtedness so prepaid.

In order to facilitate the sale or other disposition of any Car suffering a Casualty Occurrence, the Vendor shall upon request of the Purchaser, after payment by the Purchaser to the Vendor of a sum equal to the Casualty Value of such Car, execute and deliver to the Purchaser's vendee, assignee or nominee, a bill of sale (without warranties) for such Car, and such other documents as may be required to release such Car from the terms and scope of this Agreement, in such form as may be reasonably requested by the Purchaser.

ARTICLE 8. *Maintenance and Repair.* The Purchaser will at all times maintain, or will cause the Lessee at all times to maintain, the Cars in first class condition and repair and in good and efficient working order, reasonable wear and tear excepted, and acceptable for use in unrestricted interchange, at its own expense.

ARTICLE 9. *Compliance with Laws and Rules.* During the term of this Agreement the Purchaser will comply, or will use its best efforts to cause the Lessee or any other user of all or part of the Cars to comply, in all respects with all laws of the jurisdictions in which

operations of the Purchaser or the Lessee or such user involving the Cars may extend and with all lawful rules of the Federal Railroad Administration and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Purchaser or the Lessee or such user or over the Cars, to the extent that such laws and rules affect the operation, maintenance or use of the Cars. In the event that such laws or efforts to cause the Lessee or any other user of all or part of the Cars to conform, therewith at its own expense, and will maintain, or will use its best efforts to cause the Lessee or such user to maintain, the same in proper condition for operation under such laws and rules; *provided, however*, that the Purchaser may, in good faith, contest the validity and application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

ARTICLE 10. *Reports and Inspections.* On or before April 15 in each year, commencing with the year 1972, and on such other dates as the Vendor may from time to time reasonably request, the Purchaser will furnish to the Vendor an accurate report, certified by a duly authorized agent of the Purchaser or the Lessee (or officer of the Debtor as referred to and defined in the Lease), stating as of a recent date (but, in the case of each annual statement, not earlier than the preceding December 31, and in the case of any other such statement, not earlier than a date 90 days preceding the date of such statement) :

(a)(i) The Lessee's car numbers of the Cars then subject hereto, (ii) the Lessee's car numbers of all Cars that have become worn out, lost, stolen, destroyed, irreparably damaged or rendered permanently unfit for use since the date of the previous report (or since the date hereof in the case of the first such report), and (iii) the Lessee's car numbers of all Cars being repaired or awaiting repairs, and

(b) That all Cars then subject hereto have been maintained in accordance with Article 8 hereof or, if such be the case, are then being repaired in accordance with Article 8 hereof and that the legend required by Article 6 hereof has been preserved or repainted on each side of each Car and that the Lessee's identifying reporting mark and the appropriate car number have been preserved or repainted on each side of each Car as required by Article 6. In addition, the Purchaser will furnish to the Vendor, promptly upon receipt thereof from the Lessee, copies of each and every report received by the Purchaser from the Lessee pursuant to the provisions of the Lease. The Vendor shall have the right, by its agents, to inspect the Cars and the Purchaser's records with respect thereto once in every year, but no failure by the Vendor or its agents to make any such inspection shall be deemed a waiver of the Vendor's rights under this Agreement.

ARTICLE 11. *Possession and Use.* The Purchaser, so long as no Event of Default under this Agreement shall have occurred and be continuing, and, as contemplated by the next succeeding paragraph, the Lessee, shall be entitled to the possession of the Cars and the use thereof upon the lines of railroad owned or operated by the Purchaser or the Lessee, or over which the Purchaser or the Lessee has trackage rights, and upon connecting and other railroads in the usual interchange of traffic, from and after delivery of the Cars by the Manufacturer to the Purchaser, but only upon and subject to all the terms and conditions of this Agreement.

The Purchaser may lease the Cars to the Lessee as permitted by, and for use as provided in, the Lease; *provided, however*, that if and only if the Lessee shall be in default

under the Lease, the rights of the Lessee (and any permitted assigns) shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement and, so long as no such default shall be continuing, the Lessee shall be entitled to possession and use of the Cars; and *provided, further*, that so long as no Event of Default under this Agreement shall have occurred and be continuing, the Purchaser shall have the sole right to enforce the Lease against the Lessee and shall also have the right to waive any default by the Lessee thereunder. The Purchaser may also lease the Cars to any other entity with the prior written consent of the Vendor, *provided* that the rights of such other entity are made expressly subordinate to the rights and remedies of the Vendor under this Agreement. A copy of such lease shall be promptly furnished to the Vendor.

ARTICLE 12. *Prohibition Against Liens.* The Purchaser will pay or satisfy and discharge any and all sums claimed by any party from, through or under or against the Purchaser or its successors or assigns which, if unpaid, might become a lien or a charge upon the Cars, or any thereof, equal or superior to the title of the Vendor thereto, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent nor subject to penalty for non-payment, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's, employees' or other like liens arising in the ordinary course of business and, in each case, not delinquent (such liens being herein called "Permitted Liens").

ARTICLE 13. *Indemnities and Warranties.* The Purchaser will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any Car or Cars.

The Manufacturer guarantees that the materials and other components incorporated in, and the construction of, the Cars will comply fully with, and the Cars shall be completed in full accordance with, the Specifications and the other specifications, requirements and standards set forth in Article 1 hereof and warrants the Cars will be delivered in good order and ready for service by the Manufacturer to the Purchaser and, on behalf of the Purchaser, to the Lessee at St. Louis, Missouri, or other place of delivery, the Manufacturer's obligation under this paragraph being limited to making good at its plant any part or parts of any Car which shall, within one year after the delivery of such Car to the Purchaser, be returned to the Manufacturer with transportation charges prepaid and which the Manufacturer's examination shall disclose to its satisfaction not to have satisfied the above guaranties and warranties. *This warranty is expressly in lieu of all other warranties, express or implied, including any implied warranties of merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of the Manufacturer, except for its obligations under Articles 1, 2, 3 and 14 hereof, and the Manufacturer neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Cars except as aforesaid.* The Manufacturer further agrees with the Purchaser that the acceptance of any Cars by the Purchaser or the Lessee under Article 2 hereof shall not be deemed a waiver by the Purchaser of any of its rights under this paragraph.

ARTICLE 14. *Patent Indemnities.* Except in cases of designs specified by the Purchaser and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Purchaser and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Purchaser from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Purchaser or the Lessee or any other users of the Cars because of the use in or about the construction or operation of the Cars of any design, article or material infringing or claimed to infringe on any patent or other right. The Purchaser will give notice to the Manufacturer of any claim known to the Purchaser from which liability may be charged against the Manufacturer hereunder.

ARTICLE 15. *Assignments.* The Purchaser will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any Car without first obtaining the written consent of the Vendor.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Purchaser, may be assigned by the Vendor and reassigned by an assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Manufacturer from, any of the obligations of the Manufacturer to cause to be constructed and to deliver the Cars in accordance herewith or to respond to its guaranties, warranties and indemnities contained in Articles 13 and 14 hereof, or relieve the Purchaser of obligations to the Manufacturer under Articles 1, 2, and 4 hereof or subparagraphs (a) and (b) of the third paragraph of Article 3 hereof, or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Purchaser, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all of the Vendor's right, title and interest in and to the Cars, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Purchaser of the notification of any such assignment, all payments thereafter to be made by the Purchaser hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee specified in the aforesaid notice.

The Purchaser recognizes that it is the custom of railroad equipment manufacturers or sellers to assign agreements of this character and understands that the assignment of this Agreement, or some or all of the rights of the Vendor hereunder, is contemplated. The Purchaser expressly represents for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Vendor, as hereinbefore provided, the rights of such assignee to the unpaid balance of the Conditional Sale Indebtedness, together with interest thereon, and all other payments as herein provided, or such part thereof as may be assigned, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer in respect of the Cars, or the manufacture,

construction, delivery, guaranty or warranty thereof, or in respect of any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Purchaser by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Purchaser against and only against the Manufacturer.

In the event of any such assignment, or successive assignments by the Vendor, of title to the Cars and of the Vendor's rights hereunder in respect thereof, the Purchaser will, whenever requested by such assignee, change the names and word or words to be marked on each side of each Car or, in the event the Cars shall then be leased to the Lessee, use its best efforts to cause the Lessee to change such names and word or words, so as to indicate the title of such assignee to the Cars, with such names and word or words as shall be specified by such assignee, subject to the requirements of the laws of the jurisdictions in which the Cars shall be operated relating to such names and word or words for use on equipment covered by conditional sale agreements with respect to railroad equipment. The marking of such names and word or words with respect to the first assignee of this Agreement shall be without expense to the Manufacturer or such first assignee. The cost of marking such names and word or words in connection with any subsequent assignment (other than to a successor agent if the first assignee is an agent) will be borne by the subsequent assignee.

In the event of any such assignment prior to the completion of delivery of the Cars, the Purchaser will, in connection with each settlement for a Group of Cars subsequent to such assignment, deliver to the assignee as soon as possible after delivery by the Purchaser of notice fixing the Closing Date with respect to such Group, all documents required by the terms of such assignment to be delivered to the assignee in connection with such settlement, in such number of counterparts as may reasonably be requested, except for any opinion of counsel for the assignee.

ARTICLE 16. *Application of Default and Remedy Provisions.* It is contemplated that coincident with the execution and delivery of this Agreement, the Manufacturer will assign to a single assignee under a single agreement of assignment or, under such an agreement, to a single agent for several assignees: (a) all the right, title and interest of the Manufacturer in and to the Cars and each thereof, to be constructed and sold by the Manufacturer under this Agreement, when and as delivered and accepted, and upon payment to the Manufacturer of the amounts required to be paid by the said assignee pursuant to the said agreement of assignment; (b) all the right, title and interest of the Manufacturer in and to this Agreement in respect of the Cars to be constructed and sold by the Manufacturer under this Agreement (except the rights to construct and to deliver and the rights to receive the payments specified in subparagraphs (a) and (b) of the third paragraph of Article 3) and the right to reimbursement for taxes as provided in Article 4 of this Agreement, and in and to any and all amounts which may be or become due or owing by the Purchaser to the Manufacturer under this Agreement on account of the Purchaser's indebtedness in respect of the aggregate Purchase Price of the Cars and interest thereon, and in and to any other sums becoming due from the Purchaser under this Agreement, other than those hereinabove excluded; and (c) all of the Manufacturer's rights (except as aforesaid), powers, privileges and remedies under this Agreement. It is the intent of the parties to this Agreement that if, following such assignment by the Manufacturer to a single assignee or a single agent for several assignees,

an Event of Default shall have occurred and be continuing as hereinafter provided in Article 17 of this Agreement in respect of any obligation of the Purchaser to the Manufacturer so assigned, such single assignee or agent shall be entitled to enforce all of the assigned rights, powers, privileges and remedies of the Manufacturer under this Agreement as if such Event of Default were a default in respect of the Purchaser's obligations to the Manufacturer under this Agreement.

ARTICLE 17. *Defaults.* In the event that any one or more of the following events of default (the "Events of Default") shall occur and be continuing, to wit:

(a) The Purchaser shall fail to pay in full any sum payable by the Purchaser when payment thereof shall be due hereunder and such failure shall continue for 5 days; or

(b) The Purchaser shall, for more than 20 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) The Purchaser shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any Car and shall fail or refuse to cause such assignment or transfer to be cancelled by agreement of all parties having any interest therein and to recover possession of such Car within 20 days after written notice from the Vendor to the Purchaser demanding such cancellation and recovery of possession; or

(d) Any representation or warranty made by the Manufacturer in the Agreement and Assignment dated as of September 15, 1971 (the "Assignment") between the Manufacturer and First National City Bank, as agent (the "Agent") or by the Purchaser in the Assignment of Lease dated as of September 15, 1971 (the "Assignment of Lease") by the Purchaser in favor of the Agent, or in any certificate delivered pursuant to the Assignment or Assignment of Lease, shall at any time prove to have been incorrect in any material respect as of the date made; or

(e) The Manufacturer shall fail to perform or observe any term, covenant, or agreement contained in the Assignment or the Purchaser shall fail to perform or observe any term, covenant or agreement contained in the Assignment of Lease, and any such failure shall remain unremedied for 20 days after written notice thereof shall be given to the Manufacturer or the Purchaser, as the case may be, by the Agent; or

(f) The Assignment or any part thereof (including, without limitation, the guaranty of the Manufacturer set forth in Section 9 thereof) shall at any time for any reason cease to be in full force or effect or shall be declared to be null and void, or the validity or enforceability thereof shall be contested by the Manufacturer, or the Manufacturer shall deny it has any or further liability thereunder; or

(g) Any obligation or obligations of the Purchaser or the Manufacturer, in excess of \$1,000,000 in the aggregate, for the payment of borrowed money or the deferred purchase price of property (except such obligation or obligations which is or are being contested in good faith and by proper proceedings by the Purchaser or the Manufacturer, as the case may be) shall not be paid within 10 days after becoming

due, whether by acceleration or otherwise, or shall be declared to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof; or

(h) The Purchaser or the Manufacturer shall become insolvent or bankrupt or cease paying its debts as they mature, or make an assignment for the benefit of creditors, or consent to the appointment of any trustee or receiver of the Purchaser or the Manufacturer or for all or any substantial part of its properties and assets; or such trustee or receiver shall be appointed without the consent of the Purchaser or the Manufacturer, as the case may be; or bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, receivership or similar proceedings shall be instituted against the Purchaser or the Manufacturer under the laws of any jurisdiction; or any writ or warrant of attachment or similar process shall issue against any material asset of the Purchaser or the Manufacturer and such writ or warrant of attachment or similar process is not released or fully bonded within 30 days after the date on which same becomes an effective lien or levy upon such asset; or

(i) Bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, receivership or similar proceedings shall be instituted by the Purchaser or the Manufacturer under the law of any jurisdiction;

then upon the occurrence of an Event of Default referred to in subparagraph (i) above the entire indebtedness in respect of the unpaid balance of the Purchase Price of the Cars (including, without limitation thereto, the unpaid balance of the Conditional Sale Indebtedness, together with interest thereon then accrued and unpaid), and all other amounts payable by the Purchaser under this Agreement and not theretofore paid, shall become and be immediately due and payable, without any demand whatsoever, and at any time after the occurrence of an Event of Default other than an Event of Default referred to in subparagraph (i) above the Vendor may, upon written notice to the Purchaser and upon compliance with any legal requirements then in force applicable to such action by the Vendor, which cannot legally be waived by the Purchaser in this Agreement (all of such requirements which can legally be waived by the Purchaser in this Agreement being hereby waived by it), declare the entire indebtedness in respect of the unpaid balance of the Purchase Price of the Cars (including, without limitation thereto, the unpaid balance of the Conditional Sale Indebtedness, together with interest thereon then accrued and unpaid), and all other amounts payable by the Purchaser under this Agreement and not theretofore paid, immediately due and payable, without further demand; and thereafter the aggregate of the unpaid balance of the Purchase Price of the Cars (including, without limitation, such balance of the Conditional Sale Indebtedness, together with interest thereon) and all other amounts not theretofore paid shall bear interest from the date of the occurrence of an Event of Default referred to in subparagraph (i) above or the date of such declaration with respect to the occurrence of any other Event of Default, whichever date is applicable, at the rate of 10½% per annum to the extent legally enforceable, and the Vendor shall thereupon be entitled to recover judgment for the entire indebtedness payable as aforesaid and to collect judgment out of the property of the Purchaser wherever situated.

The Vendor may waive any such Event of Default and its consequences and rescind and annul any such declaration by notice to the Purchaser in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such Event of Default had existed and no such declaration had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Purchaser

that time is of the essence of this Agreement and that no such waiver, recission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 18. *Remedies.* If an Event of Default shall have occurred and be continuing as hereinbefore provided, then at any time after the entire indebtedness in respect of the aggregate Purchase Price of the Cars shall be, or have been declared, immediately due and payable as hereinbefore provided and during the continuance of such Event of Default, the Vendor may, upon such further notice, if any, as may be required for compliance with any requirement of law applicable to the action to be taken by the Vendor which cannot legally be waived by the Purchaser in this Agreement (all of such requirements which can be legally waived by the Purchaser in this Agreement being hereby waived by it), but subject to the rights of the Lessee under the Lease referred to in Article 11 hereof, take or cause to be taken by its agent or agents immediate possession of the Cars, or any of them, without liability to return to the Purchaser any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 18 expressly provided, and may remove the same from possession and use of the Purchaser or the Lessee or anyone having such possession and use and for such purpose may enter upon the premises of the Purchaser or the Lessee or where the Cars may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Purchaser or the Lessee, with or without process of law.

In case the Vendor shall rightfully demand possession of the Cars in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of the Lessee for the delivery of the Cars to the Vendor, the Purchaser shall, at its own expense, cause the Lessee, at its own expense, to forthwith assemble the Cars and place them upon such storage tracks of the Lessee as the Vendor may designate and to transport or cause to be transported the Cars or any thereof within a period not exceeding 100 days from the date that all Cars are so assembled, to the Vendor's plant at St. Louis, Missouri, or to any place or places on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as directed by the Vendor. The assembling, delivery, storage and transporting of the Cars as hereinabove provided are in the essence of this Agreement between the parties, and upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Purchaser and/or the Lessee to assemble, deliver, store and transport the Cars. The Purchaser hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any Car in any reasonable manner.

Without in any way limiting the obligation of the Purchaser under the provisions of the foregoing paragraph, the Purchaser hereby irrevocably appoints the Vendor as the agent and attorney of the Purchaser, with full power and authority at any time while the Purchaser or the Lessee is obligated to deliver possession of any Cars to the Vendor to demand and take possession of such Cars in the name and on behalf of the Purchaser or the Lessee from whosoever shall be at the time in possession of such Cars.

If an Event of Default shall have occurred and be continuing, as hereinbefore provided, then at any time thereafter during the continuance of such Event of Default and after the entire indebtedness in respect of the aggregate Purchase Price of the Cars shall be, or have been declared, immediately due and payable, as hereinbefore provided,

the Vendor (after retaking possession of the Cars as hereinbefore in this Article 18 provided) may, subject to any mandatory requirements of law then in force applicable thereto which cannot legally be waived by the Purchaser in this Agreement (all of such requirements which can legally be waived by the Purchaser in this Agreement being hereby waived by it), at its election retain the Cars as its own in satisfaction of the entire amount of such indebtedness and make such disposition thereof as the Vendor shall deem fit, and in such event all the Purchaser's rights in the Cars will thereupon terminate and all payments made by the Purchaser may be retained by the Vendor as compensation for the use of the Cars by the Purchaser; *provided, however*, that if the Purchaser, within 20 days of receipt of notice of the Vendor's election to retain the Cars for its own use, as hereinafter provided, shall pay or cause to be paid to the Vendor the total unpaid balance of such indebtedness (including, without limitation thereto, the unpaid balance of the Conditional Sale Indebtedness, together with interest thereon then accrued and unpaid), and all other amounts payable by the Purchaser under this Agreement and not theretofore paid, then in such event absolute right to the possession of, title to and property in the Cars shall pass to and vest in the Purchaser; or the Vendor with or without the retaking of possession thereof may, at its election, sell the Cars, or any thereof, free from any and all claims of the Purchaser, or of any other party claiming from, through or under the Purchaser at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine, and pending any such sale the Vendor with or without retaking possession of the Cars may, but shall have no obligation to, lease from time to time any or all Cars to such persons or corporations on such terms and for such periods as it shall deem advisable, all subject to and in compliance with any requirements of law then in force and applicable to such sale which cannot legally be waived by the Purchaser in this Agreement (all of such requirements which can legally be waived by the Purchaser in this Agreement being hereby waived by it), and the proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in taking possession of, removing, storing and selling the Cars, shall be credited on the amount due to the Vendor under the provisions of this Agreement. Written notice of the Vendor's election to retain the Cars for its own use may be given to the Purchaser by registered mail addressed to the Purchaser as provided in Article 23 hereof, at any time during a period of 30 days after the entire indebtedness in respect of the aggregate Purchase Price of the Cars shall be, or have been declared, immediately due and payable as hereinbefore provided; and if no such notice shall have been given, the Vendor shall be deemed to have elected to sell the Cars in accordance with the provisions of this Article 18.

To the extent permitted by any requirements of law then in force and applicable thereto which cannot legally be waived by the Purchaser in this Agreement (all of such requirements which can legally be waived by the Purchaser in this Agreement being hereby waived by it), any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety, or in separate lots, and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine in compliance with any such requirements of law which may not legally be waived herein by the Purchaser, *provided* that the Purchaser shall be given written notice of such sale as provided in any such requirements, but in any event not less than 10 days prior thereto, by registered mail addressed to the Purchaser as provided in Article 23 hereof. If such sale shall be a private sale permitted by such requirements, it shall be subject to the

right of the Purchaser to purchase or provide a purchaser, within 10 days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. To the extent not prohibited by any such requirements of law, the Vendor may bid for and become the purchaser of the Cars, or any thereof, so offered for sale without accountability to the Purchaser (except to the extent of surplus money received as hereinafter provided in this Article 18), and in payment of the purchase price therefor the Vendor shall be entitled, to the extent not prohibited as aforesaid, to have credited on account thereof all sums due to the Vendor from the Purchaser hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor, except as such exercise may be expressly limited herein. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Purchaser shall pay the amount of such deficiency to the Vendor upon demand, and, if the Purchaser shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Purchaser. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Purchaser.

The Purchaser will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may, to the extent permitted by law, recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

ARTICLE 19. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any state, or which by any applicable law of any state would convert this Agreement into any instrument other than an agreement of conditional sale, shall as to such state be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law may be waived, they are hereby waived by the Purchaser to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Purchaser, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell the Cars, or any thereof, any other requirements as to the time, place and terms of sale thereof, any other requirements with respect to the enforcement of the Vendor's rights hereunder, and any and all rights of redemption.

ARTICLE 20. *Extension Not a Waiver.* No delay or omission in the exercise of any power or remedy herein provided, or otherwise available to the Vendor, shall impair or affect the Vendor's right thereafter to exercise the same. Any extension of time for pay-

ment hereunder, or other indulgence duly granted to the Purchaser, shall not otherwise alter or affect the Vendor's rights or the Purchaser's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Purchaser's obligations or the Vendor's rights hereunder with respect to any subsequent payments or defaults therein.

ARTICLE 21. *Recording.* The Purchaser will cause this Agreement and any supplements hereto and any assignment hereof (a counterpart of the first such assignment being attached hereto) to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and to be deposited with the Registrar General of Canada in accordance with Section 148 of the Canadian Railway Act (and notice of such deposit to be given in the "Canada Gazette" pursuant to said Section 148), and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record any and all further instruments as may be required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Cars and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Purchaser will promptly furnish to the Vendor certificates or other evidences of such filing and recording or other actions, and an opinion or opinions of counsel for the Purchaser with respect thereto, satisfactory to the Vendor.

ARTICLE 22. *Payment of Expenses.* The Purchaser will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Manufacturer) incident to this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent, if the first assignee is an agent), and any instrument supplemental or related thereto, including all fees and expenses of counsel for the first assignee of this Agreement and for any party acquiring interests in such first assignment, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment. For the purposes of this Article 22, if the first assignee is an agent, then any successor agent to such agent shall also be considered the first assignee.

ARTICLE 23. *Notice.* Any notice to or demand upon the Purchaser pursuant hereto shall be deemed to be properly given or made if delivered or mailed, first class postage prepaid, to the Purchaser at 750 Third Avenue, New York, New York 10017; Attention of the Treasurer, or at such other address as may have been furnished in writing to the Vendor by the Purchaser. Any notice to or demand upon the respective Manufacturer pursuant hereto shall be deemed to be properly given or made if delivered or mailed, first class postage prepaid, to the Manufacturer at 750 Third Avenue, New York, New York 10017, or at such other address as may have been furnished in writing to the Purchaser by the Manufacturer. Any notice to or demand upon any assignee of the Vendor or of the Purchaser pursuant hereto shall be deemed to be properly given or made if delivered or mailed, first class postage prepaid, to such assignee at such address as may have been furnished in writing to the Purchaser or the Vendor, as the case may be, by such assignee. An affidavit with respect to such mailing of any notice or demand by the person mailing the same shall be deemed to be conclusive evidence of the giving of such notice or the making of such demand.

ARTICLE 24. *Law Governing.* The terms of this Agreement and the rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act, Section 148 of the Canadian Railway Act, and to the recording provisions of any other statute pursuant to which this Agreement may be recorded.

ARTICLE 25. *Article Headings.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

ARTICLE 26. *Modification of Agreement.* No variation of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and duly executed on behalf of the Vendor and the Purchaser.

ARTICLE 27. *Definitions.* The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder ACF Industries, Incorporated and any successor or successors for the time being to its properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor or assignors as regards any rights hereunder that are retained and excluded from any assignment; and the term "Manufacturer", whenever used in this Agreement, means both before and after any such assignment, ACF Industries, Incorporated and any successor or successors for the time being to their respective properties.

The term "Purchaser", whenever used in this Agreement, means SHPX Fifth Corporation and also any assignee of its rights under this Agreement pursuant to the first paragraph of Article 15 hereof.

ARTICLE 28. *Execution.* This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated for convenience as of September 15, 1971, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers, or representatives, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

ACF INDUSTRIES, INCORPORATED

[CORPORATE SEAL]

By W. H. Wilson
Vice President

Attest:

W. J. Haley
Assistant Secretary

SHPX FIFTH CORPORATION

[CORPORATE SEAL]

By W. H. Wilson
Vice President

Attest:

W. J. Haley
Assistant Secretary

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this 21st day of October in the year 1971 before me personally came W. C. ANDERSON, to me known, who, being by me duly sworn, did depose and say that he resides at 222 Valley Court, Haworth, New Jersey 07641; that he is a Vice President of SHPX FIFTH CORPORATION, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.


Notary Public

[NOTARIAL SEAL]

EDWIN F. MEYER
NOTARY PUBLIC, State of New York
No. 30-7917803
Qualified in Nassau County
Certificate filed in New York County
Commission Expires March 30, 1972

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this 21st day of October in the year 1971 before me personally came W. W. WILSON, to me known, who, being by me duly sworn, did depose and say that he resides at 870 United Nations Plaza, New York, New York 10017; that he is a Vice President of ACF INDUSTRIES, INCORPORATED, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.


Notary Public

[NOTARIAL SEAL]

EDWIN F. MEYER
NOTARY PUBLIC, State of New York
No. 30-7917803
Qualified in Nassau County
Certificate filed in New York County
Commission Expires March 30, 1972

ANNEX A
to
Conditional Sale Agreement

<u>Type of Car</u>	<u>Manufacturer's Specifications</u>	<u>Manufacturer's Plant</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>	<u>Base Price Per Car</u>	<u>Total Base Price</u>	<u>Delivery</u>
70 ton 50'-6", 10'-0", Sliding Door, 50,000 # Fork Lift Truck Load— Rigid Under- frame Box Car—Outside Post.	70-111-523-A dated December 9, 1970, revised March 15, 1971, August 23, 1971, and September 16, 1971, General Arrangement Drawing 6-E-0662	St. Louis, Missouri	1,000	PCA 166,000 through 166,999	Not to exceed \$14,715	Not to exceed \$14,715,000	Not earlier than Octo- ber 1, 1971 and not later than April 1, 1972 at St. Louis, Missouri

AGREEMENT AND ASSIGNMENT dated as of September 15, 1971, between ACF INDUSTRIES, INCORPORATED, a New Jersey corporation (hereinafter called the "Manufacturer"), and FIRST NATIONAL CITY BANK, a national banking association organized under the laws of the United States of America, acting as Agent under an Agreement dated as of September 15, 1971 (hereinafter called the "Finance Agreement") (said bank so acting being hereinafter called the "Assignee").

WHEREAS, the Manufacturer and SHPX FIFTH CORPORATION, a New York corporation (hereinafter called the "Purchaser"), have entered into a Conditional Sale Agreement dated as of September 15, 1971 (hereinafter called the "Conditional Sale Agreement"), covering the construction, sale and delivery, on the conditions therein set forth, by the Manufacturer and the purchase by the Purchaser of the box cars described in Annex A to the Conditional Sale Agreement (said cars being hereinafter called collectively the "Cars" and individually a "Car"); and

WHEREAS, the Purchaser and George P. Baker, Richard C. Bond, Jervis Langdon, Jr. and Willard Wirtz, Trustees of the Property of Penn Central Transportation Company, Debtor (hereinafter called the "Lessee"), have entered into a Lease of Railroad Equipment dated as of March 23, 1971 (hereinafter called the "Lease") providing for the lease, on the conditions therein set forth, by the Purchaser to the Lessee of the Cars; and

WHEREAS, the Purchaser is assigning all of its right, title and interest in and to the Lease in favor of the Assignee under and pursuant to an Assignment of Lease dated as of September 15, 1971 (hereinafter called the "Assignment of Lease") in order to secure the obligations of the Purchaser under and pursuant to the Conditional Sale Agreement assigned pursuant to this Assignment;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: That, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Manufacturer, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. The Manufacturer hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) All the right, title and interest of the Manufacturer in and to the Cars and each thereof to be constructed and sold by the Manufacturer when and as delivered and accepted and upon payment by the Assignee to the Manufacturer of the amounts required to be paid under Section 6 hereof with respect to such Cars;

(b) All the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement (except the rights to cause to be constructed and to deliver the Cars and the rights to receive the payments specified in subparagraphs (a) and (b) of the third paragraph of Article 3 thereof) and the right to reimbursement for taxes as provided in Article 4 of the Conditional Sale Agreement, and in and to any all amounts which may be or become due or owing by the Purchaser to the Manufacturer under the Conditional Sale Agreement on account of its indebted-

ness in respect of the aggregate Purchase Price (as defined in the Conditional Sale Agreement) of the Cars and interest thereon, and in and to any other sums becoming due from the Purchaser under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) All of the Manufacturer's rights (except as herein provided), powers, privileges and remedies under the Conditional Sale Agreement;

with full recourse against the Manufacturer for or on account of the failure of the Purchaser to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement;

provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Manufacturer to cause to be constructed and to deliver the Cars to be sold by the Manufacturer in accordance with the Conditional Sale Agreement or in respect of its warranties and indemnities contained in Articles 13 and 14 of the Conditional Sale Agreement or relieve the Purchaser from its obligations to the Manufacturer under Articles 1, 2, and 4 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations of the Manufacturer to the Purchaser in respect of the Cars shall be and remain enforceable by the Purchaser, its successors and assigns, against and only against the Manufacturer. In furtherance of the foregoing assignment and transfer, the Manufacturer hereby authorizes and empowers the Assignee in the Assignee's own name, in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Manufacturer to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Purchaser with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

The Manufacturer agrees that any amount payable to the Manufacturer by the Purchaser, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, security interest or charge on any of the Cars.

SECTION 2. The Manufacturer covenants and agrees that it will cause the Cars to be constructed in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Purchaser in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Manufacturer. The Manufacturer further covenants and agrees that it will warrant to the Assignee and the Purchaser that at the time of delivery of each of the Cars, to be constructed and sold by the Manufacturer, it had legal title to such Car and good and lawful right to sell such Car and the title to such Car was free of all claims, liens and encumbrances of any nature except only the rights of the Purchaser under the Conditional Sale Agreement and the rights of the Lessee under the Lease; and the Manufacturer further covenants and agrees that it will defend such title against all claims and demands whatsoever.

The Manufacturer will not deliver any of the Cars to be constructed and sold by the Manufacturer to the Purchaser until the filings, recordations, depositings (and notices) referred to in Article 21 of the Conditional Sale Agreement have been effected.

SECTION 3. The Manufacturer covenants and agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any amount which may be due or owing by the Purchaser on account of its indebtedness in respect of the aggregate Purchase Price of the Cars and interest thereon, and any other sums becoming due under the Conditional Sale Agreement, or to enforce any provision of the Conditional Sale Agreement, the Manufacturer will save, indemnify and keep harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Purchaser arising out of a breach by the Manufacturer of any obligation in respect of the Cars, or the manufacture, construction, delivery or warranty thereof, or under Articles 13 and 14 of the Conditional Sale Agreement, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Purchaser by the Manufacturer. Any and all such obligations shall be and remain enforceable by the Purchaser against and only against the Manufacturer and shall not be enforceable against the Assignee or any party or parties in whom title to the Cars, or any thereof, or any of the rights of the Manufacturer under the Conditional Sale Agreement shall vest by reason of this assignment or of successive assignments or transfers.

The Manufacturer will indemnify, protect and hold harmless the Assignee and the Investors (as defined in the Finance Agreement) from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns or the Investors because of the use in or about the construction of the Cars, or any thereof, to be constructed and sold by the Manufacturer, of any design, article or material which infringes, or is claimed to infringe, on any patent or other right.

SECTION 4. The Manufacturer will cause to be plainly, distinctly, permanently and conspicuously marked on each side of each Car at the time of delivery thereof to the Purchaser, in letters not less than one inch in height, the following legend:

“FIRST NATIONAL CITY BANK, AS AGENT, OWNER-ASSIGNEE”.

SECTION 5. Upon request of the Assignee, its successors and assigns, the Manufacturer will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Manufacturer therein or in the Cars.

SECTION 6. The Assignee, on each Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement with respect to a Group of Cars (as defined in said Article 3) shall pay to the Manufacturer an amount equal to that portion of the Purchase Price of such Group to be paid pursuant to subparagraph (c) of the third paragraph of said Article 3, provided that there shall have been delivered to the Assignee, as provided in Article 15 of the Conditional Sale Agreement, the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to it and to the special counsel for the Investors hereinafter mentioned:

(a) Bill of Sale from the Manufacturer to the Assignee, dated as of such Closing Date, transferring to the Assignee title to the Cars in such Group and warranting to the Assignee and to the Purchaser that at the time of delivery to the Purchaser under the Conditional Sale Agreement the Manufacturer had legal title to such Cars and good and lawful right to sell such Cars and title to such Cars was free of all claims, liens and encumbrances of any nature except only the rights of the Purchaser under the Conditional Sale Agreement and the rights of the Lessee under the Lease;

(b) Certificate of Inspection and Acceptance (as defined in the Conditional Sale Agreement) signed by an authorized representative of the Purchaser and the Lessee (who may be an employee of the Lessee) stating that the Cars in such Group have been inspected and accepted by him on behalf of the Purchaser and the Lessee and further stating that there was plainly, distinctly, permanently and conspicuously marked on each side of each of such Cars at the time of the acceptance, in letters not less than one inch in height, the following legend:

“FIRST NATIONAL CITY BANK, AS AGENT, OWNER-ASSIGNEE”;

(c) Invoice for the Cars in such Group accompanied by or having endorsed thereon a certification by the Purchaser as to the correctness of the prices of such Cars as set forth in said invoice;

(d) Opinion of Messrs. Hardy, Peal, Rawlings & Werner, counsel for the Purchaser, dated as of such Closing Date, addressed to the Agent and the Investors, to the effect that (i) the Purchaser is a duly organized and existing corporation in good standing under the laws of New York, its state of incorporation, and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement, the Lease and the Assignment of Lease have been duly authorized, executed and delivered by the Purchaser and are valid instruments binding upon and enforceable against the Purchaser in accordance with their respective terms, (iii) the Conditional Sale Agreement and this Assignment have been duly filed, recorded and deposited (and notice thereof given) in accordance with Article 21 of the Conditional Sale Agreement and the Lease and the Assignment of Lease have been duly filed, recorded and deposited (and notice thereof given) in accordance with Section 29 of the Lease and no other filing, recordation or depositing (or notice) is necessary for the protection of the rights of the Assignee thereunder in any state of the United States of America or in any province of Canada, (iv) the Assignment of Lease constitutes a duly perfected legal, valid and enforceable first priority security interest in and to the Lease and all rental payments and other moneys due and to become due thereunder against all third parties in all jurisdictions and all action required to perfect fully the Assignee's security interest in and to the Lease and such moneys have been taken and completed, (v) title to the Cars in such Group is validly vested in the Assignee, and that such Cars, at the time of delivery thereof to the Purchaser under the Conditional Sale Agreement, were free of all claims, liens and encumbrances except only the rights of the Purchaser under the Conditional Sale Agreement and the rights of the Lessee under the Lease, (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution, delivery and performance of the Conditional Sale Agreement, this Assignment, the Lease or the Assignment of Lease, or if any authority is necessary that it has been obtained, (vii) the execution, delivery and performance

by the Purchaser of the Conditional Sale Agreement, the Lease and the Assignment of Lease do not violate any provision of any existing law, rule, regulation, order, writ, judgment, injunction, decree, determination or award having applicability to the Purchaser or to the charter or the by-laws of the Purchaser or result in a breach of or constitute a default under any indenture or bank loan or credit agreement or any other agreement, lease or instrument to which the Purchaser is a party or by which it or its properties or assets may be bound or affected, and (viii) there are no material legal actions, suits or proceedings pending or, to the knowledge of such counsel, threatened against or affecting the Purchaser or the properties of the Purchaser before any court or administrative agency (Federal, state or local);

(e) In respect of the Closing Date relating to the initial settlement for Cars under this Section 6, an opinion of Messrs. Hardy, Peal, Rawlings & Werner, counsel for the Manufacturer, dated as of such Closing Date, addressed to the Agent and the Investors, stating that (i) the Manufacturer is a duly organized and existing corporation in good standing under the laws of New Jersey, its state of incorporation, and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Finance Agreement and the Conditional Sale Agreement have been duly authorized, executed and delivered by the Manufacturer and are valid instruments binding upon and enforceable against the Manufacturer in accordance with their respective terms, (iii) this Assignment (including, without limitation, the guaranty by the Manufacturer set forth in Section 9 hereof) has been duly authorized, executed and delivered by such Manufacturer and is a valid instrument binding upon and enforceable against such Manufacturer in accordance with its terms, (iv) the Assignee is vested with all the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement purported to be assigned to the Assignee by this Assignment, (v) the execution, delivery and performance by the Manufacturer of the Finance Agreement, the Conditional Sale Agreement and this Assignment (including, without limitation, the guaranty of the Manufacturer set forth in Section 9 hereof) do not violate any provision of any existing law, rule, regulation, order, writ, judgment, injunction, decree, determination or award having applicability to the Manufacturer or of the charter or the by-laws of the Manufacturer, or result in a breach of or constitute a default under any indenture or bank loan or credit agreement or any other agreement, lease or instrument to which the Manufacturer is a party or by which it or its properties or assets may be bound or affected, and (vi) there are no material legal actions, suits or proceedings pending or, to the knowledge of such counsel, threatened against or affecting the Manufacturer or the properties of the Manufacturer before any court or administrative agency (Federal, state or local); and in respect of each Closing Date, an opinion of such counsel for the Manufacturer, dated as of such Closing Date, reaffirming the opinion of such counsel delivered in respect of the initial Closing Date and stating that title to the Cars in such Group is validly vested in the Assignee, and that such Cars, at the time of delivery thereof to the Purchaser under the Conditional Sale Agreement, were free of all claims, liens and encumbrances except only the rights of the Purchaser under the Conditional Sale Agreement and the rights of the Lessee under the Lease;

(f) Opinion of Robert W. Blanchette, Esq., counsel for the Lessee (or an attorney designated by him satisfactory to the Assignee), dated as of such Closing Date, to the effect as set forth in Section 7 of the Lease;

(g) Opinion of Messrs. Shearman & Sterling, counsel for the Assignee, dated as of such Closing Date, addressed to the Agent and the Investors, stating that the documents and opinions of counsel delivered to the Assignee on such Closing Date, pursuant to this Section 6, are responsive to the requirements hereof and are in substantially acceptable legal form to such counsel and that all legal details in connection with the execution and delivery of this Agreement, the Conditional Sale Agreement, the Assignment of Lease and the Finance Agreement are satisfactory to such counsel;

(h) Unless payment of the amount payable pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement shall be made by the Assignee with funds furnished to it for that purpose by the Purchaser, the receipt from the Manufacturer for such payment;

(i) Certificate signed by a duly authorized officer of the Manufacturer, dated as of such Closing Date, stating that (i) the representations and warranties of the Manufacturer contained herein are correct and accurate on and as of such Closing Date as though made on and as of such Closing Date, and (ii) no event has occurred or is continuing, or would result from the proposed payment under this Section 6, which constitutes an Event of Default (as defined in the Conditional Sale Agreement) or would constitute an Event of Default but for the requirement that notice be given or time elapse or both; and

(j) Certificate signed by a duly authorized officer of the Purchaser, dated as of such Closing Date, stating that (i) the representations and warranties of the Purchaser contained in the Assignment of Lease are correct and accurate on and as of such Closing Date as though made on and as of such Closing Date, and (ii) no event has occurred or is continuing, or would result from the proposed payment under this Section 6, which constitutes an Event of Default or would constitute an Event of Default but for the requirement that notice be given or time elapse or both.

In giving the opinions specified in subparagraphs (d), (e) and (f) of the first paragraph of this Section 6, counsel may qualify any opinion, to the effect that any agreement is enforceable in accordance with its terms, by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally and may rely as to all matters governed by the laws of the State of New Jersey and of Canada upon the opinion of local counsel, in which case such opinion shall state that they believe the Assignee and they are entitled to so rely. Any opinion delivered hereunder after the Closing Date relating to the initial settlement for Cars under this Section 6 may state that counsel signing such opinion reaffirms any statement contained in any opinion of the same counsel theretofore delivered hereunder without repeating the substance of such earlier opinion.

The obligation of the Assignee hereunder to make payments on each Closing Date is hereby expressly conditioned upon the prior receipt by the Assignee, as provided in the Finance Agreement, of all the funds to be furnished to the Assignee by the Investors under (and as defined in) the Finance Agreement with respect to such Closing Date. If the Assignee fails to pay the Manufacturer any amount required to be paid with respect to any Car pursuant to this Section 6 at the time herein specified, then any right, title and interest in and to such Car, to the extent of such amount, including any right, title and interest under the Conditional Sale Agreement with respect to such Car to the

extent of such amount, which has been assigned, transferred or set over to the Assignee by the Manufacturer, shall automatically, and without further action on the part of or recourse to the Assignee, be reassigned, transferred and set over back to the Manufacturer by the Assignee.

It is understood and agreed that the Assignee shall not be required to make (i) any payment in respect of any Cars excluded from the Conditional Sale Agreement pursuant to Article 2 thereof or (ii) any payment under this Section 6 at any time while an Event of Default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement shall constitute an Event of Default, shall be subsisting under the Conditional Sale Agreement. It is also understood and agreed that, anything herein to the contrary notwithstanding, the Assignee hereunder shall not be obligated to make payment to the Manufacturer except out of funds furnished to it pursuant to the Finance Agreement.

SECTION 7. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payment due or to become due to it from the Purchaser thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder. In compliance with Article 23 of the Conditional Sale Agreement the address of the Assignee for purposes of notices and payments is 399 Park Avenue, New York, New York 10022, or such other address as the Assignee shall have furnished in writing to the Purchaser.

SECTION 8. The Manufacturer hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, and that the Conditional Sale Agreement is a valid and existing agreement binding upon the Manufacturer and the Purchaser in accordance with its terms and that it is now in force without amendment thereto; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and thing as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be.

SECTION 9. The Manufacturer, in consideration for the payments by the Assignee to the Manufacturer pursuant to Section 6 hereof and other good and valuable consideration the receipt of which is hereby acknowledged, hereby unconditionally guarantees to the Assignee, its successors and assigns the full, prompt and punctual payment when due, whether at maturity, by declaration or otherwise, of that portion of the Purchase Price of the Cars payable pursuant to subparagraph (c) of the third paragraph of Article 3 of the Conditional Sale Agreement, and interest thereon, and the due and punctual performance of all other obligations of the Purchaser and the due and punctual payment of any and all other sums payable by the Purchaser under the Conditional Sale Agreement (except for the obligations of the Purchaser to make payment of the sums payable pur-

suant to subparagraphs (a) and (b) of the third paragraph of Article 3 of the Conditional Sale Agreement) and under the Assignment of Lease (such portion of the Purchase Price, interest, obligations and sums payable being hereinafter called the "Obligations"), together with any and all expenses which may be incurred by the Assignee in collecting all or any of the Obligations. As implementing the foregoing, the Manufacturer guarantees to the Assignee, its successors and assigns that the Obligations will be paid to the Assignee, its successors and assigns, strictly in accordance with the terms and provisions of the Conditional Sale Agreement and the Assignment of Lease, regardless of any law, regulation or decree, now or hereafter in effect in any jurisdiction, which might in any manner affect the terms or provisions of the Conditional Sale Agreement or the Assignment of Lease or the rights of the Assignee, its successors and assigns with respect thereto as against the Purchaser, or cause or permit to be invoked any alteration in the time, amount or manner of payment by the Purchaser of any of the Obligations.

The Manufacturer hereby agrees that it will not exercise any rights which it may have acquired by way of subrogation under the guaranty set forth in this Section 9 or by the performance thereof or by any payment made thereunder unless and until all of the Obligations shall have been paid in full and that if any payment or payments shall be made to the Manufacturer on account of such subrogation rights at any time when all of the Obligations shall not have been paid in full, each and every amount so paid will be forthwith paid to the Assignee to be credited and applied in its discretion upon any of the Obligations, whether matured or unmatured. In the event that (i) the Manufacturer shall pay to the Assignee all or any part of the Obligations and (ii) all of the Obligations shall be paid in full, the Assignee will, at the request in writing of the Manufacturer, execute in favor of, and deliver to, the Manufacturer appropriate documents, without recourse and without representation and warranty of any kind, necessary to evidence the transfer by subrogation to the Manufacturer of an interest in and to the Obligations resulting from the Manufacturer's payments to the Assignee in respect of the Obligations, and the Assignee shall have no further responsibility to the Manufacturer or any other person or entity with respect thereto.

The Manufacturer hereby consents and agrees that the Assignee may at any time or from time to time in its discretion: (1) amend, supplement or waive any term or provision of the Conditional Sale Agreement or the Assignment of Lease, including, without limitation, amend, supplement or waive any such term or provision which would extend or change the time of payment and/or the manner, place or terms of payment of all or any of the Obligations; (2) exchange, release and/or surrender all or any of the collateral security on any part thereof by whosoever assigned or provided which is now or may hereafter be held by the Assignee in connection with all or any of the Obligations; (3) sell and/or purchase all or any such collateral in public or private sale and after deducting all costs and expenses of every kind for collection, sale or delivery, the net proceeds of any such sale may be applied by the Assignee upon all or any of the Obligations; and (4) settle or compromise with the Purchaser and/or any other person liable thereon, any and all of the Obligations, and/or subordinate the payment of the same or any part thereof to the payment of any other debts or claims which may at any time or times be due or owing to the Assignee and/or any other person or corporation; all in such manner and upon such terms as the Assignee may deem proper, and without notice to or further assent from the Manufacturer, it being hereby agreed that the Manufacturer shall be and remain bound upon the guaranty set forth in this Section 9 irrespective of the existence, value or condition of any collateral and notwithstanding any such extension, change,

exchange, release, surrender, sale, purchase, application, settlement, compromise or subordination.

The Manufacturer hereby waives notice of acceptance of the guaranty set forth in this Section 9, and also presentment, demand, protest and notice of dishonor of any and all of the Obligations, and suit against any party thereto or liable thereon, and/or in giving any notice to or of making any claim or demand under the guaranty set forth in this Section 9 upon the Manufacturer. No act or omission of any kind on the part of the Assignee in the premises shall in any event affect or impair the guaranty set forth in this Section 9. The Manufacturer further agrees that the guaranty set forth in this Section 9 shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Obligations is rescinded or must otherwise be restored or returned by the Assignee, its successors or assigns upon the insolvency, bankruptcy or reorganization of the Purchaser, or otherwise, all as though such payment had not been made.

The foregoing guaranty is a continuing guaranty and shall remain in full force and effect until payment in full of all of the Obligations and all of the expenses which may be incurred by the Assignee in collecting any or all of the Obligations or enforcing any rights hereunder, shall be binding upon the Manufacturer, its successors and assigns, and shall inure to the benefit of and be enforceable by the Assignee, its successors and assigns.

SECTION 10. From the date hereof and so long as any portion of the Conditional Sale Indebtedness shall be outstanding, the Manufacturer will furnish to the Assignee (in such number of copies as shall be reasonably requested by the Assignee): (a) within 60 days after the close of each of the first three quarters of the Manufacturer's fiscal years, a consolidated balance sheet of the Manufacturer and its subsidiaries as of the end of such quarter and comparative consolidated earnings and surplus statements of the Manufacturer and its subsidiaries for the period commencing at the end of the previous fiscal year and ending with the end of such quarter certified by an authorized officer of the Manufacturer, (b) within 120 days after the close of each of the Manufacturer's fiscal years, a copy of the annual report of the Manufacturer certified by independent public accountants of recognized standing, and (c) such other information respecting the financial condition and operations of the Manufacturer and any of its subsidiaries as the Assignee may from time to time reasonably request.

SECTION 11. This Assignment may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Assignment is dated for convenience as of September 15, 1971, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

SECTION 12. The terms of this Assignment and the rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act, Section 148 of the Canadian Railway Act, and to the recording provisions of any other statute pursuant to which this Assignment may be recorded.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly

authorized officers, or representatives, and their respective corporate seals to be hereunto
affixed and duly attested, all as of the date first above written.

ACF INDUSTRIES, INCORPORATED

[CORPORATE SEAL]


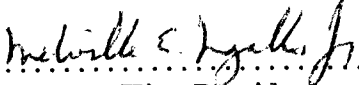
By 
Vice President

Attest:


Assistant Secretary

FIRST NATIONAL CITY BANK,
Agent

[CORPORATE SEAL]


By 
Vice President

Attest:


Assistant Cashier

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this 21st day of October in the year 1971 before me personally came W. W. WILSON, to me known, who, being by me duly sworn, did depose and say that he resides at 870 United Nations Plaza, New York, New York 10017; that he is a Vice President of ACF INDUSTRIES, INCORPORATED, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.


Notary Public

[NOTARIAL SEAL]

EDWIN F. MEYER
NOTARY PUBLIC, State of New York
No. 30-7917803
Qualified in Nassau County
Certificate filed in New York County
Commission Expires March 30, 1972

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this 21 day of October in the year 1971 before me personally came M. E. INGALLS, JR., to me known, who, being by me duly sworn, did depose and say that he resides at Birch Lane, Greenwich, Connecticut 06833; that he is a Vice President of FIRST NATIONAL CITY BANK, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

Notary Public

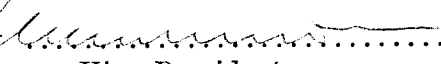
[NOTARIAL SEAL]



ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a signed copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment, is hereby acknowledged.

SHPX FIFTH CORPORATION

By 
Vice President

Dated October 21, 1971